



# Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

## PART 2

### PROTECTION OF VICTIMS

#### *Support and assistance for child victims*

#### **11 Independent child trafficking guardians**

- (1) The Scottish Ministers must make such arrangements as they consider reasonable to enable a person (an “independent child trafficking guardian”) to be appointed to assist, support and represent a child to whom subsection (2) applies.
- (2) This subsection applies to a child if a relevant authority determines that—
  - (a) there are reasonable grounds to believe that the child—
    - (i) is, or may be, a victim of the offence of human trafficking, or
    - (ii) is vulnerable to becoming a victim of that offence, and
  - (b) no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child.
- (3) A relevant authority making a determination that subsection (2) applies in relation to a child must, as soon as reasonably practicable after doing so, take steps to bring that child to the attention of the person mentioned in subsection (4)(a).
- (4) The arrangements made under subsection (1) must—
  - (a) provide for a person to appoint an independent child trafficking guardian for a child to whom subsection (2) applies,
  - (b) provide for an independent child trafficking guardian to be appointed as soon as reasonably practicable after a relevant authority brings the child to the attention of the person mentioned in paragraph (a), and
  - (c) ensure that the independent child trafficking guardian appointed is independent of any person who will be responsible for exercising functions under any enactment in relation to the child.

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*Status: This is the original version (as it was originally enacted).*

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- (5) An independent child trafficking guardian appointed in relation to a child must at all times act in the best interests of the child.
- (6) A person responsible for exercising functions under any enactment in relation to a child for whom an independent child trafficking guardian has been appointed under this section must—
- (a) recognise, and pay due regard to the guardian’s functions, and
  - (b) provide the independent child trafficking guardian with access to such information relating to the child as will enable the guardian to carry out the guardian’s functions effectively.
- (7) The Scottish Ministers may by regulations make further provision about independent child trafficking guardians appointed under this section, including, in particular, provision about—
- (a) the appointment of an independent child trafficking guardian,
  - (b) the termination of that appointment,
  - (c) the conditions (including conditions as to training, qualifications and experience) to be satisfied for a person to be eligible for appointment as an independent child trafficking guardian,
  - (d) payments to be made to, or in respect of, an independent child trafficking guardian,
  - (e) the functions of an independent child trafficking guardian,
  - (f) the records that should be maintained by any person in relation to the appointment of an independent child trafficking guardian (including arrangements to maintain a register of independent child trafficking guardians),
  - (g) the circumstances in which—
    - (i) an independent child trafficking guardian appointed in relation to a person may continue to act after that person is no longer a child, and
    - (ii) the person who is no longer a child is to be treated as a child for the purposes of this section.
- (8) In this section—
- “person with parental rights or responsibilities”, in relation to a child, means—
- (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the Children (Scotland) Act 1995,
  - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the Children (Scotland) Act 1995,
  - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the Children (Scotland) Act 1995,
  - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989,
  - (e) a person having parental responsibility for the child by virtue of—
    - (i) section 12(2) of the Children Act 1989,
    - (ii) section 14C of that Act, or
    - (iii) section 25(3) of the Adoption and Children Act 2002,
  - (f) a parent having parental responsibility for the child under Part 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

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- (g) a person having parental responsibility for the child by virtue of Article 12(2) of the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755\)](#),
  - (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
  - (i) any other person with rights or responsibilities anywhere in the world which are, in relation to a child, analogous to those described in paragraphs (a) to (h), and
  - (j) any other person specified by regulations made by the Scottish Ministers,
- “relevant authority” means—
- (a) a local authority, and
  - (b) any other person specified by regulations made by the Scottish Ministers.